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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

REPLY OF BELL ATLANTIC
TO COMMENTS AND OPPOSITIONS
TO PETITIONS FOR RECONSIDERATION

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REPLY OF BELL ATLANTIC[1] TO COMMENTS AND OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

I. Introduction and Summary

The long distance incumbents and their allies make clear, if it was not already obvious, that they want to have their cake and eat it too. They want to enter the local exchange market, but do not want to bear any of the risks or costs that entering a new market normally entails. Instead, they ask the Commission to shift those risks and costs to the incumbent local exchange carriers' customers.

For example, the long distance companies argue that they should not have to pay the non-recurring costs of providing interconnection or unbundled elements they request, and that the costs instead should be spread over some level of anticipated demand of all carriers that will use the element. E.g. AT&T Opp. at 14-15, 17; ALTS Opp. at 2-3. They further claim, however,

[1] The Bell Atlantic telephone companies serve Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia and West Virginia.

that they cannot be required to provide forecasts of their demand for those elements. E.g., AT&T Opp. at 14-15; ALTS Opp. at 33-34; MCI Opp. at 9.[2]

The long distance companies also argue that incumbent LECs do not need the protection against "frivolous requests" a termination liability would provide since CLECs must pay the costs of interconnection and unbundled elements. ALTS Opp. at 33-34. At the same time, however, they claim that the costs of interconnection or unbundled elements should be spread to all users of the network, including the incumbent LEC, in proportion to their access lines. E.g., AT&T Pet. at 15 (an approach AT&T concedes would force incumbents to "bear the largest absolute amount of one-time costs").

The long distance companies argue that a termination liability designed to recoup the investments incurred to provide an element or interconnection they request is "discriminatory" because it only applies to new entrants. E.g. AT&T Opp. at 16.[3] Bell Atlantic, however, has required its own business customers to agree to similar provisions, especially where the service requested involves special construction or other non-routine capital expenditures, precisely to avoid the risk that ordinary ratepayers might bear such costs if the requesting customer disconnects service before the end of the contract period. E.g., Miscellaneous Service Arrangements Tariff P.S.C.-D.C. No. 211, §5; General Services Tariff P.S.C.-Md.-No. 203,

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[2] NCTA concedes, however, that it "may be appropriate" for requesting carriers to provide an estimate of the amount of capacity required to fulfill their needs. NCTA Opp. at 12.

[3] NCTA argues that a termination liability is "tantamount to imposing punitive damages on CLECs in the event of unforeseen changed circumstances." NCTA Opp. at 10. As noted above, a termination liability is designed to allow Bell Atlantic to recover its investment if a customer disconnects service before the end of the contract period. If the investment was made at the behest of a CLEC, then that carrier should bear the risk of "unforeseen changed circumstances," not Bell Atlantic's ratepayers.

§§12, 15, 15A; Bell Atlantic Tariff F.C.C. No. 1, §7.4.13(C). There is no reason why ratepayers should be forced to assume greater risks on behalf of the long distance companies.

The Telecommunications Act of 1996 was designed, in part, to enable carriers to enter the local exchange market without first having to surmount the hurdle of constructing a ubiquitous network. See Conference Report at 148. Neither the Act nor the First Report and Order, however, guarantees risk-free and cost-free entry,[4] and the long distance companies' attempt to secure it on reconsideration should be rejected.

As many commenters have noted, significant issues concerning the Commission's jurisdiction to promulgate the rules attached to the First Report and Order are pending in the U. S. Court of Appeals for the Eighth Circuit. Bell Atlantic has not addressed those issues here, but its silence should not be taken as agreement that the Commission does have jurisdiction. Further, Bell Atlantic's Opposition anticipated most of the arguments raised by others in their Comments and Oppositions, and no new information has been presented that rebuts the facts presented by Bell Atlantic.[5] Accordingly, this Reply is limited to those few arguments that warrant further comment.

II. The Commission Should Eliminate Any Requirement To Make Customer Specific Contracts Available to Competitors At A Further Discount.

The long distance incumbents oppose reconsideration of the requirement that customer specific contracts be made available for resale. See MCI Opp. at 29; AT&T Opp. at 25-26. They claim that these individualized arrangements qualify as "retail" services under section 251(c)(4),

[4] Indeed, the First Report and Order is clear that carriers who enter the market by purchasing unbundled network elements assume the risks associated with investing in such elements. E.g. ¶ 334.

[5] See, e.g., Bell Atlantic Opp. at 13-22.

and that they therefore must be made available for resale at a wholesale discount. Even aside from the overriding problem of jurisdiction, however, they are wrong on the merits.

First, customer specific contracts are not covered by the plain language of section 251(c)(4)(A), which applies only to any "service that the carrier provides at retail to subscribers who are not telecommunications carriers." (Emphasis added.)[6] In any event, section 251(c)(4) has a second provision that modifies the duty established in that section. Section 251(c)(4)(B) limits the obligation imposed on the incumbent and provides that the duty is only "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service." (Emphasis added.) As a result, even if customer specific contracts were covered by this section (which they are not), the incumbent would be entitled to impose reasonable limitations and conditions on the resale of these arrangements. To cite just one example, it would be eminently reasonable to restrict competitors from merely purchasing contract arrangements at a discount and reselling them to the same customer, when it was the incumbent that undertook the effort and risk of designing a service package and preparing the bid to win a contract. Any other result would leave the incumbent in a position where it could never truly "win" a competitive bid, and would deny the customer the benefit of full fledged competition for its business.

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6 While the long distance incumbents would prefer to ignore it, the fact that "service" is singular and "subscribers" is plural is of particular significance in this case. It is significant because the purpose of the resale provision was to enable competitors to reach the mass market while they were deploying their competing facilities, not to serve individual large business customers who already benefit from competition. As a result, it is not surprising that the plain words of the Act do not extend to a package of "services" tailored to meet the individualized needs of a single "subscriber."

Finally, other new entrants urge the Commission to clarify that their own customer specific contracts and discount arrangements do not have to be made available for resale. E.g., NCTA Opp. at 23-24. Again, they want incumbent LECs to bear all the risk, while avoiding it themselves. But they can't have it both ways. Section 251(b)(1) imposes a parallel duty on every local exchange carrier "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." As a result, if it were unreasonable for incumbents to restrict the resale of customer specific contracts (which it is not), it would be equally unreasonable for new entrants to do so. And the same is true of short term promotions, or other discount arrangements.

III. The Commission Should Modify Its Reciprocal Compensation Rules That Provide A Competitive Advantage Only To Certain Competitors.

The long distance incumbents and their allies argue that the Commission should not reconsider its reciprocal compensation rules as requested by a group of local exchange carriers. Again, putting jurisdiction issues aside for present purposes, they are wrong in at least three respects.

First, the Commission should modify its rule that treats a new entrant's switch as a tandem whenever it serves the same geographic area as the incumbent's tandem. The parties opposing this request do not dispute that incumbents are allowed to charge a higher rate for tandem interconnection only because they will incur a higher cost to double switch traffic at both the end office and tandem, nor do they dispute that new entrants will generally have only a single switch and will not incur the higher cost of double switching. Instead, their arguments consist of a jumble of irrelevant claims that the incumbent's network configuration is not what would be deployed by an "efficient competitor," AT&T Opp. at 23-24, empty rhetoric about the need to "generate for the CLEC the same revenues collected by an incumbent," TCG Opp. at 7, and inexplicable claims that new entrants should receive the same rate because they provide similar "functions," MFS Opp. at 9.

All of these claims run afoul of the Act's requirement that reciprocal compensation rates be based on a reasonable approximation of the cost that "each carrier" will incur to terminate calls that originate on the other's network. 47 U.S.C. § 252(d)(2)(A). Moreover, new entrants have the ability to choose whether to interconnect with the incumbent's network at the end office or at the tandem -- and, therefore, whether to pay \$.003 or \$.005 per call -- depending on the volume of their calls and the configuration of their network. As their call volumes increase, they can alter their interconnection points to reduce their transport and termination costs further. Incumbents, however, are denied that choice; instead, they are forced to purchase only the higher priced transport and termination. Far from seeking "symmetrical" compensation rates, the CLECs are attempting to maintain a non-cost based rate differential that advantages them.

Second, the Commission should reconsider its decision to define local calling areas for CMRS providers based upon MTA boundaries. The argument made by the parties who oppose this request boils down to nothing more than the fact that "CMRS service areas have rarely tracked wireline local exchange boundaries." AT&T Opp. at 41; see also CTIA Opp. at 8 ("[M]obile telephony has not developed under the same parameters as landline carriers," and "CMRS calling patterns do not operate with respect to state boundaries"). But no party has suggested that CMRS providers modify their service areas. On the contrary, the only issue here is whether the reciprocal compensation rates charged to CMRS providers should be the same as the rates charged to other local competitors, or whether CMRS providers should pay discriminatorily lower rates that provide them an artificial competitive advantage. The only way to avoid the latter result is to modify the Commission's original rule, and to require CMRS providers to pay reciprocal compensation rates that are computed based on the same local calling areas imposed on other competitors.

Third, even though paging traffic is not reciprocal, PageNet steadfastly argues it is entitled to reciprocal compensation because "[i]f the call is terminated on the paging carrier's network, the LEC does not incur a cost of termination, but the paging carrier does." PageNet Opp. at 13. PageNet is simply wrong. The majority of paging carriers interconnect with Bell Atlantic's network through ordinary business telephone lines. Bell Atlantic's cost of completing a call to one of these paging carriers is exactly the same as the cost of completing a call to one of Bell Atlantic's business customers. Any compensation paid to these paging carriers makes it more expensive for Bell Atlantic to handle paging calls than landline calls.

IV. The Commission Should Not Be Misled By Factually Flawed Unbundling Arguments.

A. Dark Fiber Is Not an Unbundled Network Element.

Bell Atlantic has previously demonstrated that dark fiber does not meet the definition of an unbundled network element, because it is not "used" to provide telecommunications services. Bell Atlantic Opp. at 19; see also NYNEX Opp. at 16-19, GTE Opp. at 27-29, USTA Opp. at 21-23. This view was confirmed in a recent state proceeding.[7] US One, however, argues not only that dark fiber should be "unbundled," but that incumbent LECs should be obligated to make any

[7] *In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising under Section 252 of the Telecommunications Act of 1996*, Case No. 8731, Order No. 73010 at 26 (MD P.S.C. Nov. 8, 1996) ("Bell Atlantic installs its facilities based on forecasted growth and includes spare capacity for future use by its own services. The record is also clear that dark fiber is not necessary for the provision of services by competing carriers") (emphasis supplied).

unused capacity available to competitors. US One Opp. at 2-6. Under US One's approach, LECs would be unable to restore customer service in the event of damage to their facilities, and could not meet customer needs for new or additional service, because any spare capacity they install could be immediately snatched away by competitors. There is no basis for the Commission to place CLECs' interests above the public's interest in obtaining and maintaining quality telephone service.

B. Direct AIN Trigger Access Is Not Technically Feasible.

AT&T asserts that, despite the vast record compiled in the Intelligent Network proceeding,[8] the results of a small AIN trial in Manhattan "prove" that direct access to AIN triggers is technically feasible. AT&T Opp. at 8. This study, and an earlier trial which AT&T conducted with BellSouth, involved only a single application and a single network architecture in a small geographic area. See BellSouth Opp. at 4-5; NYNEX Opp. at 23, n.37; Ameritech Opp. at 12, n.17; Pacific Telesis Group Opp. at 24-26. A one-service study, however, cannot assess the impact of the interaction of multiple services and features such as are likely to occur in a multi-vendor, multi-service environment involving various network architectures. Without such an assessment, the Commission cannot determine that expanded AIN interconnection is feasible. Accordingly, the Commission should reaffirm its finding that the current record does not support expanded AIN access. First Report & Order at ¶502 and n.1171.

C. The SMS/800 Database Is Not a Call-Related Database That Needs To Be Unbundled.

MCI erroneously claims, without citation, that the Commission required the SMS/800 database to be unbundled. MCI Opp. at 15. The Commission found that exchange carriers must

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[8] CC Docket No. 91-346.

provide access to their own intelligent network Service Management Systems. First Report & Order at ¶ 493. The national SMS/800 database, however, is not part of any carrier's network, nor is it a "call-related database." The SMS/800 database is not used to route calls or to bill for calls, and it does not interact with any carrier's switch. Instead, it is a centralized database from which carriers periodically download information into their own network databases. It is those individual network databases, not the national SMS/800, that provide the functions included in the Commission's definition of a "call-related database." Id.

If, as MCI claims, it needs access to the SMS/800 database, non-discriminatory tariffed access is available to MCI, just as it is available to incumbent local exchange carriers. Accordingly, the information stored in that database is readily available, and the Commission should deny MCI's claims that any further unbundling is needed.

D. The Commission Should Reject ALTS' Request That Cross-Connects Be Provided In A Manner Contrary To The Commission's Order.

ALTS argues that the Commission should define a new unbundled element -- a "cross-connect" or "intra-office cabling" -- which it should allow CLECs to "self-provision" and to order "with or without 'point of termination' ('POT') bays and with or without testing facilities." ALTS Opp. at 17. ALTS' requests conflict with the Commission's order. First, the Commission has found that facilities in a central office located outside the collocation cages must be LEC-provided. First Report & Order at ¶¶ 594-95. Moreover, POT bays and testing facilities, like the ability to do remote testing on sub-loops, are required in order for Bell Atlantic to comply with the Commission's requirement that it "maintain, repair, or replace the unbundled network element," Id., ¶ 268; see also Id., ¶ 258, and that it provide unbundled network elements that are "at least equal-in-quality" to what it provides itself. Id., ¶ 313. ALTS' request should, therefore, be denied.

E. The Commission Should Reject Efforts To Re-Create The "Equal Charge Per Unit Of Traffic" Rule In The Guise Of Requests For Unbundled Elements.

WorldCom's request for "clarification" remains virtually incomprehensible. WorldCom Pet. at 1-7; WorldCom Opp. at 2-6. If WorldCom seeks to route local calls made by customers of CLECs that purchase unbundled switching over the incumbent's network in common with local calls made by customers of the incumbent, then Bell Atlantic is willing to provide such "transport" and will route CLEC local calls between offices exactly the way it routes its own local calls. If, however, WorldCom seeks to revise the access tariff structure for shared transport services, then its request should be rejected for reasons previously stated by Bell Atlantic. Bell Atlantic Opp. at 20.

V. Conclusion

For the foregoing reasons, the Commission must reject efforts by the long distance companies and their allies to shift the risks and costs of their entry into the local market to incumbent LECs' customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 1996 a copy of the foregoing "Reply of Bell Atlantic to Comments and Oppositions to Petitions for Reconsideration" was sent via first class mail, postage prepaid, to the parties on the attached list.

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